

EXHIBIT “1”

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

ABRAHAM FOROUZAN,

Plaintiff,

vs.

No. 2:17-cv-03875
DMG (GJSx)

BMW OF NORTH AMERICA, LLC;
SONIC AUTOMOTIVE, doing
business as "BEVERLY HILLS
BMW", entity unknown, and
DOES 1 through 10, inclusive,

Defendants.

DEPOSITION OF DANIEL DEAN CALEF
Torrance, California
Friday, May 4, 2018

Reported by:

MICHELE URBINA

CSR No. 9635

Job No. 2901759

PAGES 1 - 187

Page 1

1 An "N" is for no problem found.

2 The "P" is for parts ordered. I could have and
3 probably should have use that in the place where they
4 ordered the driveshaft, but that also goes still with
5 that repair attempt.

6 "R" is recall, and "M" is maintenance, and
7 neither one of those applied in this case.

8 Q So this chart has all "X"s and "O"s on it?

9 A Yes.

10 Q So there are some repair orders where the dealer
11 determined they were not able to duplicate the problem
12 that the plaintiff is complaining about; correct?

13 A There are some that say that, but there are
14 other documents that contradict that within the repair
15 order.

16 So if they made an attempt to do it, then I'm
17 going to list it as a repair attempt.

18 Q If they made an attempt to do what?

19 A If they made an attempt to duplicate it or
20 perform a repair, I'm going to list it as a repair
21 attempt in most situations.

22 Now, you'll see there a lot of "O"s where I said
23 there was no repair.

24 Q When would you ever use the "N," no problem
25 found?

1 A In cases where it is a single item presented
2 once -- I'll give -- I would use that if they brought it
3 in and they said -- and I'm not even listing it, but they
4 brought it in one time for a TPMS light. There was
5 nothing in it other than the fact there was a nail in the
6 tire that was fixed. So I would use it in something like
7 that.

8 The problem with no problem found is, I go back
9 and I look at how much effort was made to find the
10 problem.

11 For instance, there are times where they say,
12 test-drove it, couldn't find any problem, this and that,
13 on and on. You go to the accounting copy, you look, they
14 have zero time into that line. That's not a no problem
15 found, because they didn't make any effort, they spent no
16 time.

17 So it is all a judgment thing. I say this is
18 for my memory. You know, this is not intended to be an
19 exhibit in trial. I don't think it ever has been --
20 well, it might have been. Somebody might not have
21 objected when they should.

22 But this is -- this is my reminder for what I'm
23 doing now.

24 Q So the no problem found does not mean from the
25 dealer's perspective there's no problem found, it's from

1 your perspective?

2 A It is all from my perspective.

3 Q You only use that when you can state for certain
4 that the dealer did everything they could do, and did not
5 find a problem related to any defect in the vehicle?

6 A That would be one situation, yes.

7 Let me see if I can give you -- I've got to find
8 it. Oh, here we go.

9 The first repair order, it is repair order
10 386950. And if you look at it, it says the complaints
11 are customer states that while driving there's a rattle
12 noise from the left rear of the car. Customer states
13 that accelerating there a metal-type noise under the
14 car -- let me find a short version of the story.

15 Looking at the invoice copy, page 1, it says,
16 "Could not duplicate" -- I'm at line A -- "Could not
17 duplicate customer's concern. Found loose plastic parts
18 lying in the trunk causing noise possibly. Road test
19 vehicle. Found loose parts in the back of the trunk
20 causing noise to travel to the front of the vehicle."

21 I almost have to get out my wading boots when I
22 read that statement, because that is just such complete
23 garbage it's not even funny.

24 It says, "Do not defect in parts and material.
25 Road test vehicle with shop foreman, noise not produced."

1 Uh-huh. Let's go to what is Bates-stamped as
2 447, which is a warranty history, and there's a line
3 here, it looks like a sticky note that was attached to
4 it.

5 "Noise verified. Left front seat top rattle
6 accel and decel slow speed metal noise."

7 So we got two different noises.

8 Q Do you know what that sticky note refers to?

9 A What do you mean what it refers to? It refers
10 to verifying two different noises on the vehicle.

11 Q On what visit?

12 A That's this visit.

13 Q How are you certain to that?

14 A Because it is attached to a document from this
15 visit.

16 Q So you believe that that document right there
17 was created contemporaneously with this repair order?

18 A The repair order was created on October 26th of
19 2015 at 8:54 in the morning.

20 The document was created on October 26th at
21 11:38 in the morning.

22 Q How do you know that?

23 A It is on the time stamp.

24 Q How do you know this sticky note was created at
25 that time?

1 A That would actually be a good valid question if
2 there was a repair order that was prior to this.

3 But it cannot be attached to this repair order
4 that came after, because it is attached to this repair
5 and there was nothing prior.

6 Q Do you know where this document came from?

7 A Yeah. It is came from BMW. It was produced.
8 It's their document number 447.

9 Q BMW of North America or BMW Beverly Hills?

10 A Well, the document was originally generated from
11 BMW Beverly Hills. It was produced in Mr. Rice's
12 deposition.

13 Q How do you know that document was generated by
14 BMW Beverly Hills?

15 A Because it says, "BMW Beverly Hills."

16 Q Right, but --

17 A And these are the support documents that go
18 along with it.

19 Q Okay.

20 A This is all done as part of the original repair
21 order. When you get -- when the technician gets the
22 repair order, he has the hard copy, he has the key data,
23 he has the warranty information.

24 All of that stuff goes into the staple, and it
25 is like every inspection you go to, all that stuff is

1 stapled together.

2 If you go through my photographs of both
3 inspections, and you'll see photographs of every page,
4 including these ones.

5 Q Did the plaintiff in this case make a request to
6 BMW of North America that they repurchased the vehicle?

7 A I have no idea.

8 It has nothing to would with that sticky note,
9 though, so --

10 Q How do you know that?

11 A How do I know that that sticky note has nothing
12 to do with him?

13 Q With his repurchase request, if there was a
14 repurchase request.

15 A No, no -- you asked me if he did. The sticky
16 note has nothing to do with him asking for repurchase.
17 He may or may not have. That sticky note has nothing do
18 would with that.

19 Q I'm just wondering how --

20 A We -- well, because this at that time was in the
21 dealership's possession. And he would have made that
22 request either by himself or through his attorney
23 directly to BMW.

24 Q I'm just asking for the basis of how you know
25 that sticky note was created contemporaneously with that

1 A It varies. Less than 20 percent, I think is a
2 very safe number.

3 Q More than 10 percent?

4 A Sometimes.

5 Q Are all of these law firms that you listed,
6 they're all plaintiff's law firms; right?

7 A Yes.

8 Q Do you do any defense firms?

9 A I do work for dealership defense firms, and I
10 do -- I won't say a lot of that, but maybe five to ten
11 cases a year. I'll see stuff for dealership defense. I
12 don't do anything for manufacturers.

13 Q Okay. The dealer defense firms you are doing
14 work for, are those on Lemon Law cases?

15 A Some. Some of them involve Lemon Law, some of
16 them -- most of them don't.

17 Most of them involve alleged fraud or prior
18 collision damage or something of that nature.

19 Q Which firms, dealer defense firms, have retained
20 you to do work for them?

21 A The one I do most of the work for is -- I want
22 to say Chapman Glucksman & Dean, or something like that.

23 They work for an insurance company who
24 defends -- or who -- insureds dealerships, so --

25 Q Have you ever done any work for a manufacturer?

1 Q A reliability engineer.

2 A I didn't know that existed, so I guess not.

3 Q Are you a calibration engineer?

4 A No.

5 Q Do you have degree in any discipline of
6 engineering?

7 A No.

8 Q Do you have any certifications relating to
9 automobiles?

10 A Sure.

11 Q Can you list them out for me?

12 Are they on your CV?

13 A Yeah. I'll just refer to the CV.

14 The big one that's most common is going to be
15 ASC, certified master technician, I've had that for over
16 35 years now. It is current. I just renewed it in the
17 last two years.

18 I also carry several other ASC certifications on
19 top of that.

20 Q Have you ever been involved in the design of an
21 electronic throttle control system?

22 A No.

23 Q Have you ever worked for a BMW dealer?

24 A No.

25 Q Have you ever received any BMW specific

1 training?

2 A I received training in classes where BMW
3 vehicles and their systems are a substantial part of the
4 class, but I have never received training from BMW
5 regarding their vehicle.

6 Q Can you describe those classes to me, please?

7 A They go through a range. If you go way back --
8 way back, most of the European vehicles were using a
9 system known as the MOST bus, Media Oriented Systems
10 Transport. It is actually a Bosch system used in all the
11 vehicles.

12 I've taken numerous classes on the diagnosis and
13 repair of that system, including fiber optics repair and
14 analysis in the various CAN systems, et cetera,
15 et cetera.

16 So classes like that you would go to. And
17 because that is almost strictly a European system, we
18 would be looking at Mercedes-Benz, BMW, Volkswagen and
19 Porsche and those type of things, so I have had several
20 like that.

21 Then about electronic throttle control, I don't
22 know that I have had a class on that specific system
23 where BMW was used as the primary or one of the primary
24 systems, but I've probably taken three or four classes
25 that involved electronic throttle control.

1 Q Would you agree that others are more
2 knowledgeable about BMW cars than you are?

3 A If you go into the specific idiosyncrasies of a
4 BMW, they're going to be people who will look at a given
5 concern that they have seen before, and they are going to
6 jump on the answer quicker than I am because I haven't
7 seen it before, I haven't dealt with it.

8 Yes, are there better diagnosticians? That's an
9 open question. Because where you can look at somebody
10 who has worked strictly for BMW for the last 20 years,
11 and they know how BMW does things and how to go through
12 and do that -- and that's nice, it is very valuable
13 information, I don't want to sound like I'm putting them
14 down at all.

15 The flip-side is, I can do those same
16 diagnostics on BMW, Mercedes-Benz, Volkswagen, Audi,
17 Porsche, Ferrari, General Motors, Chrysler, and I have
18 been through the routines that all of these different
19 manufacturers use. So overall, I have a knowledge that's
20 not greater or less, it is just different.

21 Are there technicians that are going to be
22 quicker and more efficient diagnosing a BMW? Yeah.
23 Absolutely. Mike Rice is one of them.

24 Q Uh-huh.

25 A When you get that problem that's out in left

1 field, that they go through the test plan and it doesn't
2 work and they still have the problem when it is all done,
3 I'll kick their butt every time.

4 Because when I am done with BMW's routine I'll
5 go, okay, here's how the system works, I'm going to use
6 this routine and come at it from a different angle. I'm
7 going to use GM's routine, or I'm going to use BMW -- or,
8 I'm sorry, I'm going to Mercedes-Benz routine, or I'm
9 going to use Bosch's routine. I'm going to take a
10 different angle, and that works.

11 So where they have a fixed plan that the
12 computer lays out in front of them, I have a vast
13 resource that I can pull, and it is all things I've done
14 before.

15 We have seen that a lot, where they have had the
16 problems with EVAP systems, so --

17 Q Okay. That's a very long answer to a fairly
18 short question.

19 But can you say for certain that everybody who
20 works on BMW only has knowledge relating to BMWs?

21 A Oh, absolutely not.

22 Q Okay.

23 A Absolutely not.

24 Q Would you say that somebody who has achieved a
25 master technician status with BMW is one of those people

1 Q A reliability engineer.

2 A I didn't know that existed, so I guess not.

3 Q Are you a calibration engineer?

4 A No.

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6 engineering?

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21 electronic throttle control system?

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24 A No.

25 Q Have you ever received any BMW specific

1 A Which report -- well, let's go with the second
2 report, because that will just encompass everything.

3 Q That's fine.

4 A Basically, it was attending the defense -- the
5 related defense inspections, reviewing all the documents,
6 reading the depositions that were given to me at that
7 time. And --

8 Q Did you read --

9 A I'm sorry.
10 And analyzing that and then putting together a
11 report.

12 Q Did you read anything on the internet relating
13 to this vehicle, or the model of the vehicle?

14 A I'm sure I have. I didn't do it -- I didn't go
15 looking for the specific for this case.

16 Q Did you rely upon anything you might have read?

17 A No.

18 Q Have you set forth all of the opinions in your
19 report that you would expect to present at trial?

20 A In a very generic format, yes.

21 Q Okay. Do you know what the scientific method
22 is?

23 A I do.

24 Q Can you describe it to me?

25 A It involves observation of the scenario,

1 theorizing what the reasons are behind that scenario,
2 constructing an experiment to either verify or just prove
3 your theory, conducting that experiment, analyzing the
4 data.

5 Q Do you believe in using the scientific method?

6 A If it is properly used in a proper situation,
7 yes. Doesn't apply here.

8 Q Why not?

9 A Because we used diagnostic procedures to
10 diagnose the vehicle.

11 We don't use scientific method unless there's a
12 situation where the diagnostic process doesn't work, and
13 then you go on and you can use the scientific method to
14 see if you can find a solution to whatever the problem
15 is.

16 But in most cases, we're using standard
17 diagnostic procedures, and the scientific method isn't
18 something we need.

19 Q What are the factual bases for your opinions?

20 MS. SANTOS: I'm going to object as vague and
21 ambiguous as to what opinions.

22 His opinions as to the question you just
23 answered? His opinions in general?

24 MS. CARLSON: His opinions as set forth in the
25 report.

1
2 I, DANIEL DEAN CALEF, do hereby declare
3 under penalty of perjury that I have read the foregoing
4 transcript of my deposition; that I have made such
5 corrections as noted herein, in ink, initialed by me, or
6 attached hereto; that my testimony as contained herein,
7 as corrected, is true and correct.

8 EXECUTED this _____ day of _____
9 2018, at _____, _____.
(City) (State)

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12 _____
DANIEL DEAN CALEF
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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were placed under oath; that a verbatim
7 record of the proceedings was made by me using machine
8 shorthand which was thereafter transcribed under my
9 direction; further, that the foregoing is an accurate
10 transcription thereof.

11 I further certify that I am neither
12 financially interested in the action nor a relative or
13 employee of any attorney of any of the parties.

14 IN WITNESS WHEREOF, I have this date
15 subscribed my name.

16 Dated: May 15, 2018
17

18 
19

20 MICHELE URBINA

21 CSR NO. 9635
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